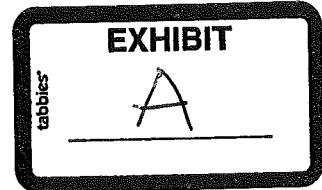


UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JOSHUA FARMER, ANDREA FARMER,) DOCKET NO. 3:11-CV-36
RAYMOND FARMER and)
DIANE FARMER,)
Appellants)
vs.)
THE PALMETTO BANK,)
Appellee.)
_____)

TRANSCRIPT OF RULING ON MOTION FOR LEAVE TO APPEAL
BEFORE THE HONORABLE GRAHAM C. MULLEN
UNITED STATES SENIOR DISTRICT COURT JUDGE
FEBRUARY 9, 2011

LAURA ANDERSEN, RMR
Official Court Reporter
United States District Court
Charlotte, North Carolina



APPEARANCES:

On Behalf of the Appellants:

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On Behalf of First National Bank of the South:

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On Behalf of Creditors 1230 Overbrook Drive Holdings, LLC;
CBA-Mezzanine Capital Finance, LLC; U.S. Bank National
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United States Bankruptcy Administrator:

LINDA SIMPSON
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Charlotte, North Carolina 28202

1 P R O C E E D I N G S

2 (Prior proceedings were not requested to be transcribed at
3 this time.)

4 THE COURT: Counsel, I appreciate the effort that
5 everybody has put into this. I know this is ongoing. We
6 will have some more to do.

7 I appreciate very much the quality of the work
8 that all of you have done and the tenor of your interaction
9 with each other.

10 Still and all, at this time, I'm required to rule
11 on whether or not there is a stay of the proceedings pending
12 appeal in the matter of Joshua and Andrea Farmer, Chapter 11
13 Case Number 10-40270, and Raymond and Diane Farmer, Chapter
14 11 Case Number 10-40269.

15 Both parties have advised the Court of the
16 standards that have to be met in order for a stay to be
17 issued pending appeal, and they are the likelihood of
18 success on the merits; likelihood of irreparable harm to
19 petitioner; and third, undue harm to the Appellees Debtors;
20 and fourth, the public interest.

21 This is a standard very similar to what's gone on
22 in the Fourth Circuit in the past, with a strong emphasis on
23 the first issue, which is likelihood of success on the
24 merits.

25 In essence, this matter is an effort to appeal the

1 SARE Order. And that Order, as the Court finds, is a final
2 Order, and the appeal is out of time, and you can't
3 bootstrap this Order.

4 The fact is that the Order that is sought to be
5 appealed, does not apply the absolute priority rule to
6 individuals, but only to corporate entities.

7 And second, this is an abusive filing. Mr. Farmer
8 admitted he was trying to avoid the absolute priority rule
9 in his 2004 -- Rule 2004 examination. And this simply isn't
10 countenanced in the bankruptcy code.

11 As to the likelihood of irreparable harm to the
12 petitioner, that remains, as argued by the creditors,
13 problematic.

14 I understand that there may be motions for stay
15 the case as law quoted, indicates that that's not enough to
16 show irreparable harm to the petitioner.

17 Undue harm to the Appellees is somewhat fuzzy. I
18 don't know how much undue harm there is. And certainly the
19 Appellees are filing today, a motion to the bankruptcy
20 court, to urge the bankruptcy court to change the Cash
21 Collateral Order in some way. So I believe they have some
22 protection there.

23 But certainly in looking at the balance of
24 hardships, it seems somewhat in equipoise as to the harm to
25 the petitioner, harm to the creditors. As to the public

1 interest, I think the public interest weighs strongly
2 against allowing a stay.

3 It seems perfectly clear that the effort by the
4 Farmers has been to restructure the transaction in a way
5 that would permit them to avoid Single Asset Real Estate
6 Rules, and to structure a proceeding in Chapter 11 in a way
7 that would be unobtainable, had they filed with the
8 individual entities.

9 While I may wish that Judge Hodges had been less
10 generous in proceeding equitably in the way that he did, I
11 think the ultimate question of his authority to do what he
12 did remains a matter for the motion to -- for leave to
13 appeal. And we will go forward with that as indicated in
14 the Scheduling Order.

15 And again, I want to thank the lawyers for their
16 work, and the bankruptcy administrator for the good quality
17 of work that's been presented, and we will go forward with
18 the rest later on.

19 So that's where we're going. And I will now go
20 pursue my other emergency of the day with my friendly
21 dentist. See you folks later on.

22 MR. ESSER: Thank you, Your Honor. Just a quick
23 clarification.

24 Will Your Honor be drafting the order on that or
25 either one of the parties?

1 THE COURT: For the reasons stated in open court,
2 the Motion for Stay is denied. That's all we're going to
3 say.

4 MR. ESSER: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (Concluded 12:06 p.m.)

7 (End of Proceedings.)

8 * * * * *

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF NORTH CAROLINA
11 CERTIFICATE OF REPORTER

12 I, Laura Andersen, Official Court Reporter,
13 certify that the foregoing transcript is a true and correct
14 transcript of the proceedings taken and transcribed by me.

15 Dated this the 10th day of February, 2011.

16 s/Laura Andersen
17 Laura Andersen, RMR

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